

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ARTHUR DANIEL, JR.,

Case No. 16-CV-1457-PP

Plaintiff,

v.

CAROLYN W. COLVIN,
Acting Commissioner of the
Social Security Administration,

Defendant.

**ORDER GRANTING PLAINTIFF'S
REQUEST TO PROCEED *IN FORMA PAUPERIS* (DKT. NO. 3)**

On November 1, 2016, the plaintiff filed an appeal from the defendant's final decision denying his Social Security benefits. Dkt. No. 1. Along with the appeal, the plaintiff filed an affidavit in support of his motion asking the court to allow him to proceed without paying the filing fee. Dkt. No. 3. In order to allow a plaintiff to proceed without paying the filing fee, the court must first decide whether the plaintiff has the ability to pay the filing fee, and if not, must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and (e)(2)(B)(i).

In the affidavit, the plaintiff indicates that he is single, unemployed, and receives only \$194 in Food Share income, all of which all goes toward his groceries. Dkt. No. 3 at 1-2. The plaintiff has demonstrated that he cannot pay the full amount of the \$350 filing fee and \$50 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v.

Hernandez, 504 U.S. 25, 31 (1992) (quoting Neitzke v. Williams, 490 U.S. 319, 325 (1989)); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993).

A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner's final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

In his complaint, the plaintiff seeks review of the Commissioner's decision denying him Supplemental Security Income. Dkt. No. 1 at 1. The plaintiff asserts that he has been disabled since 2009. Dkt. No. 3 at 3. During this time, he was incarcerated for a period of time, and was denied his disability. Id. He no longer is incarcerated, but states that he still has not received disability. Id. The plaintiff alleges that the "Commissioner's conclusions and findings are not supported by substantial evidence; and/or contrary to the social security regulations and law." Dkt. No. 1 at 2.

Based on the allegations of the complaint, the court cannot find at this point that the plaintiff's claims are frivolous or without merit. At this early stage in the case, the court concludes that there may be a basis in law or fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal

may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **ORDERS** that the plaintiff's motion for leave to appeal *in forma pauperis* (Dkt. No. 3) is **GRANTED**.

Dated in Milwaukee, Wisconsin this 20th day of December, 2016.

BY THE COURT:

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a horizontal line extending to the right.

HON. PAMELA PEPPER
United States District Judge